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Tax Alert

KPMG in Poland

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Tax changes in the Polish Deal affecting the real estate market

On 26 July 2021, the Polish government published draft bill of extensive amendments to the Polish tax law called "Polski Ład" ("Polish Deal") which are currently subject to public consultation. Some of the amendments brought by the bill may have negative impact on the real estate market.

Please find below summary of the proposed changes, which may particularly affect the real estate industry.

Limitation of tax depreciation in real estate companies

The proposed changes include limitation of the deduction of tax depreciation write offs of real estate assets in real estate companies. Under the proposed rules, the tax deductibility of tax depreciation write offs in real estate companies would be limited up to the value of accounting depreciation.

The main purpose of this amendment is to reduce the differences between the tax and accounting result reported by the real estate companies in a given year. However, neither the amendments nor the explanatory memorandum provide further information on interpretation of this rule for real estate companies recognizing the real estates as investment for accounting purposes in the fair market value where no accounting depreciation is being claimed.

If this new rule is to take force, this may mean that effectively no tax depreciation could be claimed, what would negatively impact the returns on assets.

Disallowed tax depreciation of residential real estates

According to the proposed amendment, residential real estates should not be subject to tax depreciation. The taxpayer would be entitled to recognize costs incurred for acquisition of this asset upon disposal (similarly to plot of land).

This amendment would have significant impact on the profitability of Private Rental Sector projects.

Hidden dividend

The planned amendment provides a rule that excludes from the tax deductible costs payments made to the shareholder or related entity to the shareholder that are generated in an artificial way and may be perceived as a hidden dividend, in particular payments not related to the business activity, non-arm's length transactions, over-indebtedness, usage of assets belonging to the shareholder that were previously owned by the company.

The main purpose of this amendment is to prevent recognizing as tax deductible costs payments that may be classified as hidden dividends.

Thin capitalization rules

According to the proposed change with regard to thin capitalization rules, it is intended to make it clear that any net financing cost resulting from the thin capitalization rules would be deductible to the higher of: 30 percent tax EBITDA or a 3M PLN.

Effective place of management

The planned amendment implements to the Polish CIT law the concept of effective place of management.

Under the new rule, the company registered outside Poland may be considered as a Polish tax resident (under effective place of management concept) in case when the entity is effectively controlled, governed or managed by persons/entities having a place of residence, a registered office or a management board in Poland.

This would also apply to cases where the company's current affairs are actually conducted (directly or indirectly) based on the agreement, court decision or other document by those persons or entities.

The main goal of proposed changes is to prevent the practice of incorporation of foreign entities by the Polish residents, which do not conduct real business activity there (so-called "conduit company", "letterbox company"). In case the company would be regarded as a Polish tax resident under effective place of management, it should be subject to taxation in Poland on its worldwide income.

Polish holding company

The proposed amendment introduces to the Polish law new rules on taxation of holding companies seated in Poland.

In case certain conditions are met, Polish holding company would be tax exempt on:

- dividends received from its subsidiary up to 95 percent of its amount (i.e. only 5percent of received dividend will be taxed in Poland),
- capital gain realised on disposal of shares in the subsidiary to non-related entity.

However, this rule would not be applicable to the exemption of the capital gains on the sale of shares in the real estate companies.

The proposed amendment will be an alternative for the current exemption for dividends under EU Parent-Subsidiary Directive. It means that in case the taxpayer applied tax exemption based on EU Parent Subsidiary Directive for dividend distribution, disposal of shares in a subsidiary would be then taxed under general rules.

The proposed changes are intended to enhance foreign and Polish investors to incorporate holding entities in Poland.

The consolidation relief

The consolidation relief is purposed to encourage Polish taxpayers to expand their business activity through domestic and foreign acquisitions. Based on the proposed amendments, taxpayers would be entitled to deduct so-called "qualified expenses" associated with the acquisition of shares from the tax base in the year of acquisition up to the amount of PLN 250K. The following costs should be considered as “qualified expenses”: costs associated with legal services, valuation (due diligence), interest, transaction taxes, notary and court fees (purchase price for shares is excluded from “qualified expenses”).

Consolidation relief would be available only in case:

- the acquired company is seated in Poland or another country which signed a double tax treaty with Poland that has a basis for exchange of tax information,
- the core activities of the acquired company correspond with the scope of business activity of the Polish taxpayers or could be considered as supporting for the Polish business and such activity was carried out for both companies for at least 24 months prior to the acquisition,
- the companies were not related parties in the period of 2 years prior to the acquisition,
- the transaction involves acquisition of absolute majority of votes.

The amendments brought by the draft bill are planned to enter into force on 1 January 2022.

If you would like to learn more about the issues discussed, do not hesitate to contact us.

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